

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KANDEY COMPANY, INC.,

Plaintiff,

v.

ORDER
11-CV-478A

LEO A. BARBERA,
BARBERA UTILITY CONTRACTING,
INC., d/b/a HORIZONTAL HOLES AND
HORIZONTAL EQUIPMENT
MANUFACTURING, INC.,

Defendants.

The above-referenced case was referred to Magistrate Judge Hugh B. Scott, pursuant to 28 U.S.C. § 636(b)(1)(B). On August 10, 2012, Magistrate Judge Scott filed a Report and Recommendation, recommending:

- (1) that plaintiff's motion for preclusive and other sanctions relief for defendant's failure to comply with discovery Orders [27] be granted;
- (2) that defendants be prohibited from opposing or defending against plaintiff's claims that defendant Barbera is the alter ego of Horizontal Equipment Manufacturing, Inc. or Barbera Utility Contracting, Inc., d/b/a Horizontal Holes and that Horizontal Holes and/or HEM breached its contract with plaintiff;
- (3) that plaintiff's other alternative sanctions should be denied;
- (4) that defendants (both themselves and their counsel) should be required to pay interest on the sanctions previously imposed at the rate of 0.18%; and

- (5) the imposition of sanctions for this second motion should be granted.

The Court has carefully reviewed the Report and Recommendation, the record in this case, and the pleadings and materials submitted by the parties, and no objections having been timely filed, it is hereby

ORDERED, that pursuant to 28 U.S.C. § 636(b)(1), and for the reasons set forth in Magistrate Judge Scott 's Report and Recommendation,

- (1) plaintiff's motion for preclusive and other sanctions relief for defendant's failure to comply with discovery Orders [27] is granted;
- (2) defendants are prohibited from opposing or defending against plaintiff's claims that defendant Barbera is the alter ego of Horizontal Equipment Manufacturing, Inc. or Barbera Utility Contracting, Inc., d/b/a Horizontal Holes and that Horizontal Holes and/or HEM breached its contract with plaintiff;
- (3) plaintiff's other alternative sanctions are denied;
- (4) defendants (both themselves and their counsel) are required to pay interest on the sanctions previously imposed at the rate of 0.18%; and
- (5) the imposition of sanctions for this second motion is granted.

The case is referred back to Magistrate Judge Scott for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: October 9, 2012